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Subject: OCSPP News for February 5, 2021
Attachments: FW: Special Clips - Michael Regan Confirmation Hearing - 2/4/21

OCSPP News Round-Up

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US EPA nominee stresses environmental justice and PFAS control

Cheryl Hogue, Chemical & Engineering News

<https://cen.acs.org/environment/pollution/US-EPA-nominee-stresses-environmental/99/web/2021/02>

Ensuring environmental justice and controlling releases of per- and polyfluoroalkyl substances (PFAS) are priorities for Michael S. Regan, President Joe Biden’s pick to run the US Environmental Protection Agency.

Regan said at his Feb. 3 confirmation hearing that he plans to “restructure” the EPA and place an environmental justice official in each of the agency’s regulatory offices—three focused separately on air, water, and land pollution plus one centered on chemical safety. He told the Senate Environment and Public Works Committee, which held the hearing, that he would seek additional funding for these new positions and for an environmental justice adviser to the EPA administrator.

Regan also discussed PFAS, a group of environmentally persistent synthetic chemicals, some of which are highly toxic, that are commonly used for nonstick and water-repellant coatings. Since 2017, in his job leading the North Carolina Department of Environmental Quality, Regan has grappled with PFAS-tainted drinking water affecting hundreds of thousands of people the state. He’s also overseen PFAS cleanup by chemical maker Chemours, the source of much of that pollution.

At the hearing, Regan said that in addition to setting limits on PFAS in drinking water, he wants the EPA to establish thresholds on allowable industrial releases of these chemicals.

“We need to have a full accounting of how these ‘forever chemicals’ are entering into our water as well as our air,” Regan told the committee. “We need to take a very strong look at the emissions that are coming from the combustion and incineration of products” and whether these processes send PFAS into the atmosphere.

Regan described his administrative style as convening and listening to those who will be affected by agency decisions. He said his regulatory decisions will hew to science, federal law, and market trends such as the expanding use of electric cars.

North Carolina's senators, Republicans Richard Burr and Thom Tillis, who are not members of the committee, introduced Regan at the hearing. They endorsed him, saying Regan is highly qualified for the job as EPA chief.

The panel is expected to vote soon on Regan's confirmation, which needs approval from the full Senate before Regan can assume the top job at the EPA.

Biden's pick to lead EPA pledges to 'correct' rules and actions

Terry Hyland, Chemical Watch

<https://chemicalwatch.com/211330/bidens-pick-to-lead-epa-pledges-to-correct-rules-and-actions>

President Biden's nominee to lead the EPA has told a Senate committee that his priorities will be to restore the role of science and transparency, address PFAS contamination in the environment and stand up for environmental justice and equity.

If confirmed, one of Michael Regan's first tasks will be to implement the president's recent order to review and consider rescinding regulations and other actions taken by the EPA over the last four years.

"There are lots of staff at EPA right now doing a reevaluation of a ton of rules and activities that may or may not have been done in a transparent manner or leveraged science the way we'd like, and so we're going to correct that," Mr Regan told the Senate's Committee on Environment and Public Works (EPW) during a confirmation hearing on 3 February.

The EPA will take a look at the TSCA risk evaluation for asbestos, he said, and determine if there are any "data and science gaps".

"You have my pledge that as we take a look at all of these [risk evaluations], number one, the process that we undertake will be much more transparent; number two, we will use the latest science and the latest data and number three, our results should be supported by the science and by the law," Mr Regan said. "You have my commitment to do that."

The comment came in reply to a question from Senator Jeff Merkley (D-Oregon), who asked if the EPA would "redo" the recently completed TSCA risk evaluation for chrysotile asbestos.

PFAS priority

Mr Regan also said that per- and polyfluoroalkyl substances (PFASs) "will be a top priority", with much of the focus on addressing drinking water contamination and reducing emissions or releases into the environment.

In late January, a group of more than a hundred lawmakers from the US House of Representatives signed a letter urging President Biden to take "immediate steps" to reduce their use in products and to halt the approval of new ones under TSCA.

With regard to PFASs, Mr Regan said, "we will pursue discharge limits, we will pursue water quality values. We will pursue all avenues that we can while we're developing these rulemaking processes to give the proper signals to states so states can take the appropriate actions."

Another topic that captured significant attention during the hearing was environmental justice, and ensuring that all people and communities have a voice in environmental policies and protections.

Mr Regan said he intends to bring in an "environmental justice and equity adviser" and potentially restructure the agency with similar experts in each of the EPA's relevant offices to make sure that such considerations are "applied at every level of our decision making".

Senators from both sides of the political spectrum offered praise for Mr Regan, signalling his likely confirmation once the full Senate votes on it in the coming weeks.

Senator Tom Carper (D-Delaware), the ranking Democrat on the panel, applauded Mr Regan's past work, including leading negotiations that resulted in the cleanup of PFAS contamination in the Cape Fear river during his tenure as head of North Carolina's Department of Environmental Quality (DEQ).

On the other side of the political spectrum, Senator Richard Burr (R-North Carolina), who introduced Mr Regan at the hearing, closed his remarks by saying, "I look forward to supporting his nomination on the floor" of the Senate.

PFAS Focus by State Lawmakers Moves Beyond Drinking Water Limits

Pat Rizzuto, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/pfas-focus-by-state-lawmakers-moves-beyond-drinking-water-limits?context=search&index=62>

Legislators in 27 states plan to introduce legislation during their coming sessions to restrict so-called forever chemicals that can persist in air, water and soil, according to a report published Wednesday.

Safer States, a network of environmental health groups tracking state chemical policies, will issue its annual report on the legislative agendas for 2021. Bills requiring state agencies to regulate per- and polyfluoroalkyl substances, or PFAS, are the focus of most bills expected to be introduced, the report said.

Legislators in at least 11 states—Arkansas, Arizona, Connecticut, Iowa, Maryland, Michigan, Minnesota, Oregon, Rhode Island, Virginia, and Vermont—will introduce measures to eliminate PFAS from food packaging.

At least five states—Indiana, Maryland, Maine, Michigan, and Vermont—will propose bills seeking medical monitoring, strict liability and/or to extend the statute of limitations for PFAS lawsuits.

Other states, including Maine, Maryland, Michigan, Minnesota, and Vermont, will offer legislation to identify and/or restrict PFAS in biosolids, also called sludge, which is used as fertilizer.

PFAS are called forever chemicals because neither sun, weather, nor microbes can break some of them down. That persistence, plus health problems including increased cholesterol and weakened immune systems, has prompted several states to set limits for PFAS in drinking water.

Science Panel Probes Medical Tests' Role for PFAS-Exposed People

Pat Rizzuto, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/science-panel-probes-medical-tests-role-for-pfas-exposed-people?context=search&index=7>

The nation's premier scientific advisory group launched a project Thursday to advise federal health agencies on what doctors could tell patients exposed to "forever chemicals" to help them understand whether the chemicals may be affecting their health.

The National Academy of Sciences also will advise a federal health research agency on potential high-priority studies that could aid in understanding the health effects of per- and polyfluoroalkyl substances, a family of persistent chemicals known as PFAS. The academy's Guidance on PFAS Testing and Health Outcomes committee will perform the work.

Three agencies—the Agency for Toxic Substances and Disease Registry (ATSDR), the National Center for Environmental

Health, and the National Institute of Environmental Health Sciences (NIEHS)—asked the academies to form the committee, which expects to issue its advice early next year.

Officials with the ATSDR and NIEHS on Thursday said they wanted the committee's help to learn if there's sufficient science to justify advising doctors to use specific clinical tests to get information PFAS-exposed communities want; to identify actions that could reduce PFAS exposures; and to know what PFAS-connected health concerns are most important to study.

Scientific studies have linked some PFAS to a wide range of health problems, including high cholesterol, weakened immune systems, and cancer.

US state action on PFASs shows no sign of slowing

Terry Hyland, Chemical Watch

<https://chemicalwatch.com/211861/us-state-action-on-pfass-shows-no-sign-of-slowng>

Legislators in at least 18 US states are expected to consider actions this year to restrict the use of per- and polyfluoroalkyl substances (PFASs) in various products, according to an analysis from the NGO Safer States.

While efforts to limit new sources of PFAS contamination will be a primary focus for many states, legislators will also look to restrict the use of flame retardants in furniture, children's products or electronics. Still other statehouses are likely to consider legislation to require disclosure or impose limits on chemicals of concern in cosmetics.

Overall, Safer States expects a year similar to 2020, with more than half of the state legislatures – at least 27 – considering some 180 different total policies that could affect the use or release of chemical substances.

The list of states includes many that have been active in the past, like California and New York. But Texas, the country's second most populous state, could also join the legislative fray, with bills aimed at limiting the use of PFAS in products or setting permissible levels in drinking water.

Not typically a state at the forefront of chemicals management, Texas already has seen legislation introduced to regulate hydrofluorocarbons (HFCs), according to Chemical Watch's legislative tracker.

'Our generation's lead'

The top priority for many state legislatures will be PFAS.

"PFAS is our generation's lead," Sarah Doll, Safer States' national director, told Chemical Watch. As states across the country identify PFAS contamination and grapple with cleanup costs, they will continue to look at ways to limit any new sources entering the environment.

Already, nearly ten states have introduced legislation to restrict the substances' use in firefighting foam, food packaging or textiles. These include Arizona, Connecticut, Iowa, Maryland, Minnesota, Oregon, Vermont and Virginia.

Safer States said they expect to see similar legislation in a further ten states: Alaska, California, Massachusetts, Maine, Michigan, New York, North Carolina, Rhode Island, Texas and Washington.

Different states will take different approaches, Ms Doll said. In some, there may be a single bill that looks to limit PFASs in one or more products. In others, there may be multiple individual bills that take aim across different product categories.

Legislation introduced in Connecticut and coming in Maine could go the farthest. The bills look to phase out all uses of PFASs in consumer products, starting where there are already available alternatives. In addition, many state bills targeting PFASs could add restrictions for other substances as well, such as phthalates or bisphenols.

The American Chemistry Council (ACC) has repeatedly cautioned against measures that treat all PFASs the same. Each

substance has its own unique properties and uses, according to the ACC, and class-based approaches can restrict those with beneficial and important uses.

The anticipated legislative action is no guarantee that laws will be enacted. But this year's bills are expected to build on a busy 2020, in which New York became the third state to ban PFAS in food packaging, while multiple states – like California, Colorado, Michigan, Minnesota, New Hampshire and Wisconsin – restricted their use in firefighting foams and equipment. Still others took regulatory action aimed at the class of substances.

Flame retardants, cosmetics

In addition to tackling PFAS, several states are expected to look at potential restrictions on the use of flame retardants in various products.

Massachusetts governor Charlie Baker on 1 January signed a law that will ban the use of 11 flame retardants in children's products, upholstered furniture, carpeting, bedding and window treatments.

Another seven states could potentially follow. Safer States expects similar bills this year from Alaska, Delaware, Georgia, Iowa, New Jersey, New York and Virginia. Some restrictions could also expand to cover the use of flame retardants

TJX Companies sets out plans to remove bisphenols, PFASs across US premises

LEIGH STRINGER, Chemical Watch

<https://chemicalwatch.com/211747/tjx-companies-sets-out-plans-to-remove-bisphenols-pfass-across-us-premises>

US-based multinational retailer, TJX Companies, has set out plans to remove bisphenols in register receipts and per-and polyfluoroalkyl substances (PFASs) in "compostable serve-ware" in office cafeterias.

This year, TJX, which owns the brands TJ Maxx, HomeGoods, Sierra, HomeSense and Marshalls, will eliminate bisphenols from its register receipts in all US retail brand stores by switching to "phenol-free paper".

The company also plans to replace its compostable serve-ware in US corporate office cafeterias to ensure they are PFAS-free. It has not publicly set a timeline for this goal or said whether it plans to extend this to the other regions in which it operates.

By 2025, it also plans to phase out the use of PVC in some packaging designed by its own fashion and style experts or those that are "manufactured just for us".

The company announced the plans in December, six months after nearly half of its shareholders asked the company to report on whether and how it plans to reduce its chemicals footprint.

Developing policies

The company said it is in the process of developing policies that limit chemicals of concern in its operations and in certain products it sells, which it plans to publish later this year.

As part of this, the company said it had increased its internal capacity and knowledge around chemicals of concern. This included collaboration between its legal team and multiple departments, including environmental sustainability, global social compliance, product development, buying, store operations, product compliance, global sourcing and procurement.

TJX's global environmental sustainability committee (GESC) – a team of experts from each of its major geographies that leads its sustainability programme – has set chemicals management as a strategic priority.

It has assigned a sub-committee to assess the areas on which it should focus limiting chemicals of concern, across the global business.

In addition, members of the GESC have engaged with some of TJX's larger merchandise vendors and other large retailers to discuss their chemicals management plans and actions.

External input

As part of its plan, the company uses the US NGO Clean Production Action's Chemical Footprint Project's (CFP) framework. It is reviewing the management strategy section of the CFP survey to help develop its policies.

It has also appointed an external expert to review its chemicals management for certain personal care products. This includes peer benchmarking, a review of credible third-party certifications and an overview of chemicals of concern in these products.

The company is also collaborating with multi-stakeholder group the Green Chemistry and Commerce Council (GC3) to learn and participate in discussions around chemicals management.

TJX's plans come a few months ahead of the fifth annual Mind the Store retailer report card, which evaluates major retail chains' chemical safety policies. The latest iteration is planned for publication in the first quarter of this year. TJX received an 'F' grade in the previous three report cards.

US NGO Safer Chemicals Healthy Families, which oversees the Mind the Store campaign, said the retailer's plans will "begin to drive toxic chemicals out of TJX's operations and clearly demonstrates that the company is serious about making headway to develop and implement a broader safer chemicals management programme".

TJX declined Chemical Watch's request to comment further on its plans.

PFAS Liabilities Loom For Manufacturers After Chemours Settlement

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsca-news/pfas-liabilities-loom-manufacturers-after-chemours-settlement>

A toxic torts attorney says manufacturers could soon face a wave of litigation over their use of per- and polyfluoroalkyl substances (PFAS) even without direct EPA action under TSCA, thanks to the \$4 billion settlement between DuPont and Chemours on liability from the chemicals and an expected federal drinking water standard.

John Gardella, a toxic torts attorney who works on PFAS issues for law firm CMBG3, tells Inside TSCA that even if EPA is slow to restrict PFAS in products through the Toxic Substances Control Act (TSCA), a federal drinking water standard -- which he expects by 2022 -- would set off a barrage of litigation against the companies that use the chemicals.

And those suits could target not just industrial sites linked directly to water or land contamination, but makers of articles like PFAS-contaminated packaging or consumer goods, if research shows that the chemicals in those products leach into drinking water at levels above EPA's standard.

While environmentalists have called for strict TSCA rules as their preferred path to limit PFAS in products, companies could find themselves forced to limit their use of the chemicals regardless of direct regulations if they face heavy civil liability for making such articles.

The recent settlement between chemicals giant Chemours and its parent company DuPont -- over claims that Chemours was spun off fraudulently without disclosure of the PFAS liabilities it would inherit -- could further clear the path for such litigation since it apportions liability between the two firms and sets aside money to pay for cleanups.

Gardella noted as an early example of that model a 2020 suit where 11 California water boards targeted four chemical makers and one downstream user, a roofing manufacturer, over PFAS contamination in their drinking water supplies. The plaintiffs charged that the chemicals came from roofing shingles that leached PFAS into stormwater runoff.

“That’s a signal to me that parties, especially attorneys, are starting to look more toward manufacturing entities in lawsuits related to PFAS, and they’re going to start bringing them into these personal injury claims as well,” Gardella said.

The suit targeted chemical makers DuPont, 3M, Chemours and Corteva, along with Decra Roofing Systems -- a downstream user that purchased materials from the other four companies as components in its finished products.

Gardella says downstream commerce companies should “be wary” about a cascade of PFAS litigation, and wrote in a Jan. 25 blog post for the firm that with the DuPont-Chemours case settled “companies that manufacture products and that utilize PFAS in some aspect of the manufacturing process or the end product must heed the news of the . . . settlement and properly plan now to avoid significant and costly PFAS product liability lawsuits that we predict will come.”

He told Inside TSCA that a similar model could apply to PFAS in food packaging if scientists find proof that those chemicals leach into food and thus threaten human health -- another high-priority area for environmental and public-health groups seeking TSCA regulations on the chemicals.

“There has not yet been any litigation from that, as of right now, but there certainly could be,” Gardella told Inside TSCA. “And what would be needed there, which is missing right now, is sort of the scientific link showing that there is sufficient amount of leaching taking place between the food packaging and the food. That just isn’t there yet. But I do know there are scientists working on that very issue.”

EPA Agenda

EPA is widely expected to step up its regulation of PFAS in drinking water specifically, as part of President Joe Biden’s campaign promise to set enforceable Safe Drinking Water Act limits for the chemicals. Gardella says that step would also set off litigation on other sources of PFAS contamination that are already being regulated at the state level, including food packaging.

“EPA’s going to start...

Environmentalists tout state PFAS policies despite Biden agenda

NA, Inside TSCA

<https://insideepa.com/tsca-takes/environmentalists-tout-state-pfas-policies-despite-biden-agenda>

Even as EPA is widely expected to tighten its implementation of TSCA under the Biden administration, environmental groups expect states to “take the lead” in regulating a host of toxic chemicals in 2021, including a host of planned restrictions on per- and polyfluoroalkyl substances (PFAS).

Safer States, a coalition of environmental groups that supports state-level chemical policies, on Feb. 3 posted a new online analysis of pending legislation and regulation that it says show continued state action on the subject, especially to regulate PFAS.

“2021 will be another year when states will take the lead in winning protections from toxic chemicals and incentives for safe alternatives,” Safer States National Director Sarah Doll said in a release announcing the analysis, pointing to data that “at least 180 bills will be under consideration in 2021 and efforts to combat toxic PFAS chemicals will continue to be the most prevalent issue.”

And she said the trend is likely to continue even if EPA follows through on President Joe Biden’s plan to reverse Trump-era policies and craft stringent chemicals regulations under the Toxic Substances Control Act (TSCA).

“While we expect the Biden administration to fulfill its promises to take on toxic chemicals like PFAS, state leadership remains critical to protect communities and drive action to get these toxic chemicals out of our homes and workplaces,” Liz Hitchcock, director of Safer Chemicals Healthy Families, said in the Safer States release.

The group’s analysis describes the 180-bill statistic as “a conservative estimate based on bills that have been identified, as well as considerations of multiple versions of bills, and other policies that are in development but not yet clear,” Doll added.

Doll writes that at least 11 states are expected to consider policies to eliminate PFAS from food packaging, including Alaska, Arizona, Connecticut, Iowa, Maryland, Minnesota, Oregon, Rhode Island, Virginia, and Vermont. Six states will consider bills to eliminate PFAS from textiles like carpets, rugs and upholstery, and seven states will introduce legislation governing PFAS in firefighting foam.

“Multiple states will be considering restrictions and/or disclosure requirements for PFAS in other consumer products,” including limits on ski wax in Vermont, children’s products in California and cookware in both California and Massachusetts, Doll writes.

Connecticut and Maine are also moving to phase out all uses of PFAS in consumer products, “beginning with those where there are readily available substitutes,” Safer States says.

In addition to direct product regulations, Indiana, Maryland, Maine, Michigan, and Vermont will consider policies “for medical monitoring, strict liability and/or extending the statute of limitations for PFAS lawsuits,” which would open the door to an increase in PFAS-related litigation in those states, the group says.

“Indiana has proposed offering veterans to have their blood tested for PFAS, while Maine is working to extend the statute of limitations so farmers and others who have had their land pollution by PFAS are able to seek legal remedy even though the contamination took place years earlier,” according to Safer States’ analysis.

Minnesota is expected to consider creating of a state-level PFAS-task force, a step that five other states have already taken. Members of Congress are also pushing a federal version of that model as part of a broad PFAS agenda the lawmakers unveiled last week.

Many of the states considering legislation, like Connecticut, Minnesota, Iowa, and Rhode Island, are members of the Toxics in Packaging Clearinghouse (TPCH), a nine-member coalition of states that use the TPCH’s Model Toxics in Packaging Legislation. (/node/226677) In 2020, TPCH began the process to add PFAS and phthalates to its model legislation, and plans to finalize those revisions in 2021 after weighing public comments.

EPA to Launch Broader Review of Asbestos Risks This Summer (1)

Pat Rizzuto, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/epas-broader-asbestos-exposure-risk-review-to-launch-in-summer?context=search&index=45>

The EPA this summer will launch a court-ordered review of risks arising from old uses of asbestos that still may lead people to inhale the cancer-causing mineral, an agency official said Wednesday.

This second, or supplemental, asbestos risk evaluation differs from the one that the Environmental Protection Agency published last month. It will examine all six recognized forms of asbestos instead of just the chrysotile fibers. And it will look at discontinued uses of the mineral, such as asbestos insulation and flooring, that pose exposure risks to janitors, building maintenance personnel, and others.

The extra analysis stems from the U.S. Court of Appeals for the Ninth Circuit’s 2019 ruling that the agency violated the 2016 Toxic Substances Control Act amendments by categorically excluding discontinued, or “legacy,” uses of chemicals

from its chemical risk evaluations.

The agency will release midyear its preliminary plans, or draft scope, for public comment, said Alie Muneer, who's leading the team that will develop asbestos regulations to reduce unreasonable risks. She spoke at a meeting during which EPA officials described plans to develop regulations to control ongoing uses of chrysotile asbestos and the broader, second analysis.

Under TSCA, the EPA's preliminary plans for the second analysis are supposed to include what health concerns, asbestos uses, and highly exposed or susceptible groups of people it will examine. The six types of asbestos the agency will examine in its second risk evaluation are chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite.

Asbestos Ban Sought

The EPA's second risk evaluation should correct deficiencies in the first analysis, said Robert Sussman, counsel to the Asbestos Disease Awareness Organization. The group, known as ADAO, had asked the U.S. Court of Appeals for the Ninth Circuit to challenge the first risk assessment.

The deficiencies "include EPA's failure to address all asbestos fiber types, all cancers and non-cancer diseases linked to asbestos, asbestos-contaminated consumer and industrial products, environmental releases of asbestos, risks to susceptible subpopulations, and aggregate risks from multiple sources of exposure," Sussman said.

The EPA also should commit to an enforceable deadline to complete its second analysis, he said.

Brent Kynoch, managing director of the Environmental Information Association, which works with professionals certified to remove asbestos, focused on the EPA's regulatory step resulting from its first risk evaluation.

That next step is to draft a regulation to reduce the risks of six ongoing ways chrysotile asbestos is used. Regulatory options Muneer identified include mandating specific engineering controls and personal protective equipment at worksites, and requiring a hazard communication program to alert workers of asbestos' risks and ways to handle it.

"The only effective risk management option is a ban," Kynoch said.

Robyn Brooks, a vice president at the Chlorine Institute, which represents companies that import chrysotile asbestos to make equipment used in the chlorine-production process, disagreed. That industry uses engineering and other controls to manage asbestos safely, showing they can reduce risks to acceptable levels, she said.

Getting More Data

Separately on Wednesday, the EPA asked the U.S. District Court for the Northern District of California to narrow its December ruling. The court ordered the EPA to amend an existing rule laying out how the agency will seek information on asbestos in imported and other products. Instead, the EPA wants the discretion to decide how it would seek that information.

During EPA's asbestos meeting, Barry Castleman, an environmental consultant and member of ADAO's Science Advisory Board, said the agency should obtain information on the extent of imported asbestos yarn, thread, and cement.

Cement-containing asbestos is found in U.S. water pipes. A 2019 EPA rule requires...

Regan Skirts Calls To Re-Do Asbestos Evaluation But Agrees To Review

David LaRoss, Inside TSCA

<https://insideepa.com/tsca-news/regan-skirts-calls-re-do-asbestos-evaluation-agrees-review>

EPA Administrator nominee Michael Regan says he will revisit the Trump-era TSCA assessment of chrysotile asbestos and identify "data and science gaps," but stopped short of backing calls from some Democrats and environmentalists for

the agency to redo that and other chemical evaluations entirely.

During his Feb. 3 confirmation hearing before the Senate Environment and Public Works Committee, Regan agreed with Sen. Jeff Merkley's (D-OR) request for EPA to revisit the asbestos evaluation, which is already the subject of a lawsuit from environmentalists that it was unlawfully narrow, as well as a threatened suit seeking to mandate the agency conduct a broader, supplemental evaluation.

"I absolutely will work with my staff to take a look at that evaluation, determine where those data and science gaps are, and govern ourselves accordingly," Regan told Merkley.

And he later pledged to ensure that when EPA conducts chemical reviews "we'll be driven by science and we'll be driven by the rule of law."

But that promise is less aggressive than Merkley sought in his question to the nominee, where he echoed EPA science advisors' harsh critique of the assessment's scope and findings during a 2020 peer review.

"The science advisory committee that looked at the work of EPA said, 'you didn't consider all the asbestos fibers, you didn't consider all the asbestos diseases. You didn't look at all the different routes and pathways of exposure. So you really did a very minimal job of capturing the full impact. Would you consider having the EPA redo that part 1 evaluation, and get this right and really use the best science to really see what the risk is to human health?'" he said.

Yet even though Regan only promised to "take a look" at the asbestos evaluation, that still represents an expansion of the Toxic Substances Control Act (TSCA) reviews that President Joe Biden has already ordered EPA to conduct.

Biden's order targets the "framework" regulation setting out procedures for evaluations of existing chemicals and the precedent-setting first evaluation under that policy, of the solvent methylene chloride, but none of the other nine assessments the Trump EPA performed under the revised TSCA.

The White House has also directed EPA to review all six TSCA risk-management rules crafted since 2017, including restrictions on certain uses of methylene chloride and five rules for chemicals it designated as suitable for immediate regulation under the law's provisions for "persistent, bioaccumulative and toxic" substances.

In exchanges with other lawmakers, Regan also voiced support for tightening EPA's approach to per- and polyfluoroalkyl substances (PFAS), though he did not specify how he would approach the chemicals under TSCA as opposed to other authorities the agency has considered applying to the contaminants, including the Safe Drinking Water Act and Superfund law.

SNUR Guidance

Recent efforts to regulate PFAS through TSCA have largely centered on the chemicals' presence in manufactured products. The Trump EPA's largest step in that area was to issue a significant new use rule (SNUR) governing certain types of PFAS, though it came under fire for an implementing guidance environmentalists say unlawfully limited that rule's scope.

In response to questions from Sen. Kirsten Gillibrand (D-NY), Regan said he would "pursue all avenues" to regulate PFAS, and referenced his approach to the chemicals in his current post as head of the North Carolina Department of Environmental Quality.

"We will pursue discharge limits, we will pursue water quality values, we will pursue all avenues that we can while we're developing these rulemaking processes, to give the proper signals to states so that states can take the appropriate actions, like we've had to take in North Carolina," he said.

And he added that he plans to "sit down with the staff at EPA to understand the multiple avenues we have to address

PFAS.”

In an exchange with Sen. Cory Booker (D-NJ)...

Environmentalists Urge EPA To Ban Chrysotile Asbestos In TSCA Risk Rule

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/environmentalists-urge-epa-ban-chrysotile-asbestos-tsca-risk-rule>

Environmentalists and public health advocates are pressing EPA to ban chrysotile asbestos after the agency’s evaluation of the substances identified a series of unreasonable risks to human health though some industry officials are signaling that they may challenge any effort to ban the substance in court.

During EPA’s Feb. 3 webinar on the upcoming risk-management rule for asbestos, Brent Kynoch of the Environmental Information Association, a group representing the asbestos abatement industry, said the agency’s presentation outlined several regulatory options that are “all already in place or tried in the past with the exception of one -- a simple ban. There are a plethora of federal and state regulations ... even with those requirements in place, unreasonable risk exists. It needs to be banned.”

Several other speakers echoed that position, including a former EPA toxicologist and environmentalists.

But industry representatives hinted that they could challenge such a rule in court, and questioned EPA’s findings that 16 of the 32 asbestos uses it evaluated pose unreasonable risks -- signaling that the agency may face a legal battle no matter what option it chooses for an eventual rule.

Speakers who backed the call for a full chrysotile ban included retired EPA toxicologist Penny Fenner-Crisp, who now works with the Environmental Protection Network of EPA alumni.

“It is time to proceed to rulemaking on an expedited timeline,” Fenner-Crisp said. She argued that the need for a quick rulemaking is deepened by EPA’s past, unsuccessful attempts to regulate asbestos -- most prominently a ban crafted by the George H.W. Bush EPA under the original Toxic Substances Control Act (TSCA), which an appellate court struck down in 1991.

She also pointed to the Trump EPA’s April 2019 significant new use rule (SNUR) on asbestos, which she said prohibits discontinued uses without EPA having an opportunity to evaluate each intended use and take any necessary regulatory actions, which could include prohibition.

But, she said, “a SNUR does not present a permanent ban. Remaining uses are not eliminated. The possibility exists that importing, processing or manufacturing as well as discontinued uses could be approved in the future. . . . There is no excuse for delaying action on a comprehensive, permanent ban any further.”

And Bob Sussman, counsel to the Asbestos Disease Awareness Organization (ADAO) -- one of the groups challenging EPA’s TSCA evaluation as too narrowly focused -- also echoed the calls for a ban along with concerns over the scope of the study.

“We support the findings of unreasonable risk for . . . asbestos uses in EPA’s Part 1 risk evaluation. As EPA decides how to eliminate these risks, it should reject limited options like greater use of [personal protective equipment (PPE)], labeling or work practices that offer inadequate protection against one of the most lethal substances known to man,” Sussman said.

“We know that there is no safe level of exposure to asbestos, that OSHA regulations have failed to eliminate significant risks to workers, and that asbestos continues to cause nearly 40,000 deaths a year. These realities demand that EPA move beyond the failed approaches of the past and ban the . . . asbestos uses determined to present unreasonable

risks.”

TSCA Evaluation

The comments followed a presentation from EPA’s Alie Muneer, the agency’s chemical manager for the chrysotile asbestos evaluation, where she outlined the evaluation’s findings and possible regulatory options for addressing the unreasonable risks EPA identified.

Muneer’s slides suggest several options for possible asbestos rules, including requiring labeling with specific directions and precautions; mandating “specific engineering controls and PPE at occupational sites”; setting an occupational air exposure limit with monitoring mandates; requiring employers to craft hazard communication programs for workers; and banning “importing, processing, and...

EPA Appeals Order Requiring TSCA Asbestos Reporting Under CDR

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsc-news/epa-appeals-order-requiring-tsc-a-asbestos-reporting-under-cdr>

EPA is asking a federal judge to walk back his order requiring the agency to revise its Chemical Data Reporting (CDR) rule to add asbestos reporting to the program, a request that is sparking criticism from environmentalists who say it shows the Department of Justice (DOJ) is still “carrying water” for the Trump administration.

It is “disturbing that, with new leadership at EPA, DOJ is still carrying water for the Trump EPA rather than accepting the need to comply with the Court’s order,” Bob Sussman, counsel to Asbestos Disease Awareness Organization (ADAO), one of the plaintiffs in the case, tells Inside TSCA.

“Why the Biden EPA would continue to resist reporting that is not only urgent for asbestos but needed for other risk evaluation chemicals is baffling. The clock is running on both risk management and the Part 2 risk evaluation for asbestos and EPA should want the information that expanded CDR reporting will provide,” he says.

EPA sought the change in a Feb. 2 filing, arguing that the “appropriate remedy” to address Trump officials’ flawed responses to states’ and environmentalists’ petitions would be for the agency to reconsider the petitions.

The filing, framed as a motion to “alter or amend judgement,” is the Biden administration’s first formal response to Judge Edward Chen’s Dec. 22 ruling in Asbestos Disease Awareness Organization (ADAO) et al v. EPA and State of California et al v. EPA, where he held that the agency acted unlawfully when it denied petitions calling for asbestos to be added to the list of chemicals subject to the CDR program.

“[T]he Court should modify its Order by deleting the specific instruction to amend the CDR rule and remand the matter to EPA with instructions to reconsider Plaintiffs’ petitions consistent with the deficiencies identified by the Court and issue a new response granting or denying the petitions,” says EPA’s motion in the consolidated litigation.

The agency says Chen erred “by directing EPA to take specific action on remand by amending the CDR Rule,” because the Administrative Procedure Act (APA), under which Chen reviewed the suits, only allows a judge to remand a flawed petition denial for a new decision that addresses whatever faults in the original response rendered it unlawful, while the Toxic Substances Control Act (TSCA) allows courts to order the beginning of a new rulemaking process, but not to determine its result.

Thus, it argues, Chen’s “Judgment rests on a manifest error of law. The Court decided this case under the standard and scope of review set forth in the APA . . . Section 706(2) authorizes courts to ‘set aside’ agency action found to be ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’”

CDR reports generally include information such as how much of a chemical is produced at various facilities, how much is

imported into the country, and how many workers could be exposed. EPA regularly uses that data for its exposure analyses, in part because it is the only source of such information for many chemicals regulated under TSCA.

The petitions at issue argued that data is necessary for EPA's TSCA risk evaluation of asbestos. However, EPA denied them, arguing that subjecting asbestos to CDR reporting would not produce information the agency did not already have access to, and that it would not arrive in time to inform the just-completed TSCA evaluation.

Scathing Order

But Chen, of the U.S. District Court for the Northern District of California, concluded that EPA acted unlawfully in denying the petitions. "EPA is not incapable of collecting this information; instead, it is unwilling to do so," he wrote in a scathing order granting the states' and environmentalists' motions for summary judgement and denying EPA's cross-motion for summary judgement.

"EPA's unwillingness to act stands in the face of its significant statutory authority to require that this information be reported via the CDR rule and runs contrary to...

EPA Will 'Explore' Wheeler's Animal Testing Directive After Regan Vote

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/epa-will-explore-wheeler-s-animal-testing-directive-after-regan-vote>

EPA plans to reconsider former Administrator Andrew Wheeler's ambitious directive seeking to significantly reduce the amount of animal testing that the agency uses and requires companies to conduct when evaluating chemicals' toxicity, but officials are deferring any definitive shift until after Administrator-designate Michael Regan is confirmed.

Wheeler's directive "is a question we will be exploring with the new . . . leadership. I have no doubt we'll continue developing [new alternate methods (NAMs) for conducting chemical testing], but the question is whether they agree with those goals for reducing animal testing and the path that we laid out to do that," Jennifer Orme-Zavaleta, a career EPA scientist who serves as the acting chief of EPA's Office of Research and Development (ORD), told the agency's Board of Scientific Counselors' (BOSC) subcommittee on chemical safety research during a Feb. 2 online meeting.

Once Regan -- who faces a Feb. 3 confirmation hearing -- is confirmed by the Senate, "then we'll be able to further explore those actions with him and how he wants us to proceed," Orme-Zavaleta, added in response to a question from a member of the panel.

Chris Frey, a former EPA science advisor who was appointed Feb. 2 as ORD's deputy assistant administrator, echoed her comments. Before joining EPA, Frey was among the critics of Wheeler's 2019 testing directive, then calling it an effort "to kneecap science."

"I haven't had a chance to get with the administrator and I don't want to get in front of him," Frey said of the directive, adding that like some of the BOSC members, he is concerned about the directive's timeline.

"I share the premise of your question and appreciate why you're asking. We need to consider when is the science ready for prime time on NAMs and what is the schedule."

Both officials were responding to questions from BOSC member Jim Stevens, a pharmacology consultant, who asked for updates on the status of Wheeler's animal testing directive and the controversial science transparency rule that the Trump administration finalized early in January -- but which a federal district judge vacated on Feb. 1.

Stevens said he and other BOSC members were concerned by both Trump EPA actions: the science rule, which generally sought to bar EPA from using science research in its decision-making where the underlying raw data weren't publicly available as well as "fairly aggressive" schedule Wheeler established for phasing out the use of animal studies to test

chemicals' toxicity.

He added that some members had "concerns that a replacement of animal testing [could] hamper good risk-based decision-making."

Wheeler's Directive

Wheeler's 2019 directive sought to reduce EPA requests for, and funding of, mammal studies by 30 percent by 2025 and eliminate all mammal study requests and funding by 2035, though the administrator would be able to approve animal testing orders outside those limits as needed.

The directive also required the agency to "come as close as possible to excluding from its approval processes any reliance on mammal studies conducted after January 1, 2035, including those performed by third parties, subject to applicable legal requirements."

Late in the Trump administration, EPA cited the order as part of its rationale for denying environmentalists' petition seeking mandatory testing of some 54 per- and polyfluoroalkyl substances near the Chemours Company's Fayetteville, NC, manufacturing facility, and again in Jan. 15 test orders for nine of the existing chemicals slated for the next round of TSCA evaluations, all of which exclude any animal-testing mandate.

But critics have publicly doubted whether Wheeler's targets were feasible -- including Frey, who was an environmental engineering professor at North Carolina State University before joining EPA.

In 2019, shortly after Wheeler announced his directive, Frey tweeted that "[i]t makes absolutely no sense to phase out a methodology that is...

EPA reviewing plan to reopen TSCA inventory to address CBI errors

Kelly Franklin, Chemical Watch

<https://chemicalwatch.com/210566/epa-reviewing-plan-to-reopen-tsca-inventory-to-address-cbi-errors>

The US EPA has confirmed that its plan to reopen the TSCA inventory to allow businesses to fix confidentiality errors is "undergoing review", following a directive from President Biden to assess pending actions carried over from the past administration.

The scrutiny of the policy calls into question whether companies that had planned to use the additional notification period to correct reporting errors related to confidential business information (CBI) claims will still have an opportunity to do so.

The Trump EPA announced earlier this month that it would reopen the TSCA 'active-inactive' inventory reporting period, citing "submitter confusion and issues" regarding CBI claims made during the 'inventory reset' reporting exercise (see box).

The reopening was intended to give companies a chance to submit, amend or withdraw a substance activity notification "in order to make corrections to confidentiality claims and substantiations," the agency said in a final rule issued in pre-publication form on 5 January.

President Biden, however, paused the policy when he signed a 'regulatory freeze' executive order on his first day in office. The directive requires the EPA and other federal agencies to conduct a review of all new or pending actions that had not yet been published in the Federal Register, including the planned reopening of the reporting period.

"EPA can confirm that the 'TSCA active-inactive reopening of the reporting period' action is currently undergoing review," an agency spokesperson said.

Confusion around CBI claims

The Trump administration's EPA said it wanted to reopen the reporting after it learned "that some entities did not understand the regulatory requirements for maintaining an existing CBI claim," according to the final rule.

The confusion stems from a retrospective reporting exercise that took place in 2017-18. This 'inventory reset' required companies to identify chemicals that were manufactured, imported or processed in the US during a ten-year "look-back" period by submitting a 'Notice of Activity' (NOA) Form A.

Those wishing to maintain an existing claim to withhold the identity of a confidential chemical had to indicate so at that time, and provide substantiation by November 2020.

But due to confusion around the notification requirements, some companies "failed to make timely filings, or made errors in their Notice of Activity Form As during the reporting period that undermined the existing CBI claims, which might otherwise be valid if subject to a review pursuant to agency regulations," said the agency.

These errors came to light after the agency published in May 2020 a preliminary list of substances due to lose their confidentiality protection, it said.

The EPA said a chance to remedy the mistakes is necessary "because inaction may cause financial injury to certain entities in the regulated community."

"When the chemical identity is on the confidential portion of the TSCA inventory, it represents significant and valuable intellectual property, an important innovation by the entity or its partner" said the final rule. "Publicly revealing this information could result in the loss of this intellectual property, which could substantially injure a company's competitive position."

'Favour to industry'

Richard Denison, lead senior scientist at the Environmental Defense Fund, welcomed the EPA's scrutiny of the rule, which he characterised as a "last-minute favour to industry" that was not issued for public comment before the Trump administration released it in final form.

The EPA's plan to allow companies another chance to make a confidentiality claim before a substance loses its protected status had "no mention of the other side of the equation here: that these actions deny the public information they're entitled to," he told Chemical Watch.

Others, however, disagreed that the agency should change course.

"I don't see why the process should change," said Herb Estreicher, a partner at...

Solvents group requests 'correction' to TSCA risk evaluation of carbon tetrachloride

Kelly Franklin, Chemical Watch

<https://chemicalwatch.com/211316/solvents-group-requests-correction-to-tsca-risk-evaluation-of-carbon-tetrachloride>

The Halogenated Solvents Industry Alliance has submitted a request for correction on the TSCA risk evaluation of carbon tetrachloride, citing concern with "errors" in the US EPA's review that led to "inaccurate findings".

The request adds to a growing number of challenges the agency faces over its first ten risk evaluations, even as it moves to the risk management stage for each of the substances.

Released in November 2020, the final risk evaluation of carbon tetrachloride determined that the substance presents an unreasonable risk to workers in 13 out of 15 evaluated conditions of use.

The HSIA submitted a request for correction (RFC) on 26 January, claiming the review did not comply with TSCA and federal information quality guidelines. The risk evaluation, it said, suffered from "two key deficiencies":

a failure to incorporate "longstanding workplace practices recognised and required by EPA", relying instead on "unrealistic assumptions" about dermal exposure; and
"in disregard of advice provided by outside peer reviewers", using a linear non-threshold model coupled with an assumption that the principal study relied on did not produce a no-observed-adverse-effect level (NOAEL).
In both cases, the HSIA said these decisions resulted in "estimates of risk thousands of times higher than reality".

In turn, the risk evaluation's findings "provide erroneous starting points for risk management", said the HSIA. Carbon tetrachloride is an important feedstock for domestic production of HFO alternatives that are replacing HFCs phased down under the Kigali Amendment to the Montreal Protocol, it said, so the implications are "enormous".

The HSIA's request comes even as the EPA is faced with litigation on four of its other first ten risk evaluations: methylene chloride, asbestos, HBCD, and 1,4-dioxane.

In each of these cases, the plaintiffs are challenging the risk evaluations' conclusions that a substance does not pose an unreasonable risk in certain applications.

The HSIA's concerns, however, relate to 'unreasonable risk' findings – and these determinations are not considered final agency actions that are subject to judicial review. The opportunity for a legal challenge would instead come after the EPA imposes risk management rules.

"If the risk evaluation remains unchanged and EPA uses it as the basis for regulation, then judicial review of the risk evaluation could be sought as part of a challenge to the final regulation under TSCA," Caffey Norman, a partner with Squire Patton Boggs who represents the HSIA, told Chemical Watch.

An EPA spokesperson said the agency "is reviewing the request and will respond through the appropriate channels".

EPA Urged To Regulate 1,4-Dioxane Uses Excluded From Risk Evaluation

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsca-news/epa-urged-regulate-14-dioxane-uses-excluded-risk-evaluation>

Environmentalists are urging EPA to consider regulating certain uses and exposure pathways of 1,4-dioxane under TSCA even though the Trump administration excluded them from its controversial evaluation of the substance, arguing that the benefits that accrue from such rules could justify any regulations.

EPA "must fully account for regulatory benefits," Earthjustice attorney Jonathan Kalmuss-Katz told a Feb. 2 webinar the agency hosted to begin discussing options for regulating the chemical under the Toxic Substances Control Act (TSCA). "This will allow them to consider exposure risks and pathways that they ignored the first time around," he added.

And Richard Denison, lead senior scientist at the Environmental Defense Fund (EDF), said that because the prior administration had "illegally excluded" certain exposure pathways and conditions of use from its evaluation, the agency should now consider the benefits that would accrue from regulating them.

"Because of the gross deficiencies in the final risk evaluation for 1,4-dioxane -- including wholesale exclusions of major exposure pathways (e.g., drinking water) and conditions of use (e.g., worker use of formulated products), we believe it is incumbent on EPA to consider the benefits that would accrue from risk management measures that address those ignored exposures, and select measures that optimize health and environmental protection," Denison wrote in a comment to Inside TSCA.

EPA released the final evaluation of 1,4-dioxane late last year, the ninth of the first batch of 10 TSCA evaluations of existing chemicals the agency had promised to release by the end of 2020.

As expected, the final evaluation concludes that the chemical poses unreasonable risk to workers in 13 of 24 evaluated conditions of use. Those findings trigger a one-year deadline under the revised TSCA to propose risk management rules to mitigate those risks.

EPA found that workers faced unreasonable risk from “both short- and long-term inhalation and dermal” exposures to 1,4-dioxane, while identifying health effects in the scientific literature ranging from liver, kidney, respiratory system and neurological effects, and cancer.

But on the other hand, EPA retained its controversial draft conclusion the chemical poses no unreasonable risk to the general population and findings in its similarly controversial supplemental analysis that eight additional ‘uses’ of the chemical as a byproduct in consumer products also pose no unreasonable risks.

However, the agency excluded certain uses and exposure pathways consistent with the Trump administration’s policy of excluding items that are already regulated by other EPA programs or other agencies.

EPA’s exclusion of drinking water exposures has already drawn stiff criticism from utility officials, who charged that such an exclusion underestimates risks.

And EDF and other environmental groups have already sued, charging in part that the agency’s evaluation “ignores major ways people are exposed to the chemical -- including through drinking water and on-the-job exposure of millions of workers -- despite clear requirements in the law to evaluate those exposures.”

EDF also charged in a statement on the suit that “EPA also illegally failed to analyze the greater risk faced by some groups of people, including children, workers and communities near sources of release of 1,4-dioxane.”

Risk Management Rules

But even before the litigation takes off, EDF and other groups are pushing agency officials to address risks that may have been excluded from the evaluation.

In his statement to Inside TSCA, EDF’s Denison said the revised law allows the agency to address risks if the benefits justify it.

“If a particular risk management option has greater benefits than another, that is to be considered by EPA in deciding which option(s) to select,” Denison said. “Such benefits could well include health or environmental benefits that arise from reducing exposure by more than...

EPA Seeks Three-Week Extension In Methylene Chloride Evaluation Suit

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsca-news/epa-seeks-three-week-extension-methylene-chloride-evaluation-suit>

EPA is seeking another three weeks to respond to environmentalists’ challenge to the Trump administration’s final TSCA risk evaluation of methylene chloride, giving the Biden administration time to determine how the agency will approach both the precedent-setting litigation and the underlying chemical review.

“EPA requests an additional three weeks to respond to the motions to allow adequate time to review the motion and the proposed declaration and to brief its incoming leadership on the petitions, the Risk Evaluation, and the issues presented in the motions,” EPA’s Feb. 1 motion to the U.S. Court of Appeals for the 9th Circuit says.

EPA's motion notes that under the court's normal rules the deadline for its response brief in *Neighbors for Environmental Justice, et al., v. EPA* would fall on Feb. 4, and asks for that deadline to be moved to Feb. 25.

The agency adds that its request is unopposed by the other parties.

The motion comes after petitioners filed their opening merits briefs on Jan. 25 with Democratic attorneys general, environmentalists and unions all claiming the agency violated the revised Toxic Substances Control Act (TSCA) in several ways. At the same time, petitioners also asked the court to direct EPA to "complete and supplement the administrative record" by adding comments on draft versions from other federal agencies.

And while the agency is holding off on a formal answer to the petitioners' request, it uses the motion to raise an early objection to the record request, saying comments from other federal agencies on draft versions of the evaluation are "deliberative and therefore not part of the administrative record."

It is unclear to what extent if at all the Biden EPA will defend its predecessor's actions under the law; under a Jan. 21 memo from EPA Acting General Counsel Melissa Hoffer, the agency is seeking stays, abeyances or deadline extensions in all pending suits over Trump-era actions while officials review the underlying policies.

Hoffer's memo covers the long list of cases that deal with "EPA regulation promulgated between January 20, 2017, and January 20, 2021, or seeking to establish a deadline for EPA to promulgate a regulation in connection with the subject of any such regulation, in order to provide an opportunity for new Agency leadership to review the underlying rule or matter."

But the White House has already targeted the methylene chloride evaluation specifically, naming it as one of several Trump-era TSCA actions EPA must review and possibly reconsider, though resource constraints could limit officials' freedom to overhaul it.

For instance, one environmentalist says that while officials could strengthen the TSCA existing-chemicals program by revising either the methylene chloride evaluation or the "framework" rule for all such reviews, they should carefully consider whether they will have time to complete whatever look-backs they choose within statutory deadlines.

Amending the evaluation "rule will take some time and I wouldn't want to delay course-corrections for the 27 [risk evaluations] now underway until a new rule is in place. I don't think the framework rule blocks the improvements we're seeking so EPA should just be able to go ahead and implement them, leaving for later changes in the rule itself," the environmentalist says.

Pending Litigation

Petitioners in the *Neighbors* case are targeting what they say are specific flaws in the agency's analysis of methylene chloride that led to its determination that six of the 53 evaluated do not present unreasonable risk, but also on broad questions of whether the revised law is intended to narrowly address risks not already addressed by other laws or to replace those laws.

"This is a very important lawsuit [that will determine] what kind of authority EPA has under TSCA," one industry attorney has said. It will show whether "TSCA is a gap-filling statute, which is what the legislative history says, or is it intended to supplant...

EPA announces TSCA inventory update

NA, Inside TSCA

<https://insideepa.com/tsca-takes/epa-announces-tsca-inventory-update>

EPA has released its latest update to the TSCA inventory of chemical substances that are or have been manufactured, processed or imported in the U.S., the latest in the now-ongoing biannual updates to the inventory required under the revised statute.

EPA reported Feb. 2 that the TSCA inventory now “contains 86,557 chemicals of which 41,864 are active in U.S. commerce.”

The regularly required updates to the inventory are one of the many changes Congress implemented in its 2016 reform of the Toxic Substances Control Act (TSCA) because of longstanding questions regarding how many chemicals are in active use in the U.S.

EPA’s rule on how the inventory updates are conducted is among the handful of ‘framework’ rules the Trump EPA finalized to implement the statute’s reform. It required companies to report chemicals manufactured or processed in the United States over the decade ending in June 2016, with a reporting deadline in February 2018. EPA issued its first update in February 2019.

EPA’s announcement says that its update is “part of EPA’s regular posting of non-confidential TSCA Inventory data. The next regular update of the Inventory is planned for summer 2021.”

The inventory has also been updated to “include new chemical substance additions, commercial activity data and regulatory flags, such as polymer exemptions, TSCA section 4 test orders and TSCA section 5 significant new use rules (SNURs),” EPA says.

Since the original TSCA was enacted in 1976, the inventory has delineated chemicals that are considered “existing,” -- which were once largely grandfathered from regulation -- from those deemed “new,” which must undergo EPA review before entering the market.

EPA also has limited information about many of the chemicals on the inventory, which is bifurcated between publicly known chemicals and those that are withheld from public view as confidential business information (CBI). Speaking at a Feb. 2 meeting of EPA’s Board of Scientific Counselors, an EPA computational toxicology official indicated there are between 33,000-35,000 chemicals “that are nonconfidential and active in commerce. . . . For about 75% there is no in vivo, repeat-dose, [non-CBI] toxicity studies . . . on those chemicals.”

The official, Rusty Thomas, director of the Center for Computational Toxicology & Exposure within EPA’s research office, added that is why new alternate methods for testing chemicals “are important. [We’re] helping to fill huge data gaps that EPA has.”

NAS Prepares To Review IRIS Handbook As EPA Weighs Program’s Role

Maria Hegstad, Inside TSCA

<https://insideepa.com/tsc-news/nas-prepares-review-iris-handbook-epa-weighs-program-s-role>

A newly created National Academy of Sciences (NAS) committee is preparing to review the operating handbook for EPA’s Integrated Risk Information System (IRIS) program, just as the Biden administration is preparing to consider whether to boost IRIS to its past role after the Trump EPA sidelined it in favor of the reformed TSCA program.

The committee’s first meeting, on Feb. 11, will follow EPA’s Nov. 9 release of the IRIS handbook for public comment and peer review, after almost a decade of development and internal reviews -- and increasing calls for the document’s release from stakeholders and Congress. Comments are due by March 1.

The committee’s chair is Lisa Bero, a systematic review expert with positions at three universities. Among the other committee members are Weisueh Chiu, a toxicology professor at Texas A&M University who worked in the IRIS program for years, and Gary Ginsberg, director of environmental health at the New York state health department.

NAS' input could be especially important to the Biden EPA's IRIS agenda since the handbook is a response to a slate of recommendations issued by a separate panel in 2011 as part of its critical review of the then-draft assessment of formaldehyde.

That committee took the rare step of writing a separate chapter of the report outside its charge questions where it urged EPA to strengthen IRIS assessments in general, including by adopting systematic review.

While those reforms remain a work in progress, the handbook and NAS' review are already drawing interest from companies, industry lawyers and the Small Business Administration (SBA) -- the latter of which highlighted the draft document at its last environmental roundtable on Jan. 15.

And both IRIS critics in industry and key Democratic supporters of the program say it is poised to become a key part of chemical assessments again under the Biden administration, giving even more importance to the long-delayed reform efforts and to any input the new NAS committee might offer.

In particular, the SBA event included presentations from EPA research official Andrew Kraft and Kevin Bromberg, a longtime IRIS observer retired from SBA's Office of Advocacy now an independent consultant, that could signal where the program is headed -- or where stakeholders will try to push it.

Bromberg, a frequent critic of IRIS assessments who has also praised the agency's progress implementing reforms started by IRIS chief Ken Olden, used his presentation at the roundtable to urge the agency to re-implement Olden's efforts; provide a more "robust response" to public comments on IRIS; take more public input into draft assessments and peer review questions; and direct peer reviewers to respond to public comments as well as agency questions among other recommendations.

Olden's Efforts

Bromberg pointed in particular to Olden's efforts to make the process for developing IRIS assessments more efficient by trying to hold public discussions of science and science policy issues in the early stages development instead of trying to address those issues only after a draft assessment has been written -- a significant undertaking that could require reworking major elements of the drafts.

During Olden's tenure, IRIS hosted initial meetings to discuss problem formulation to guide the scope of the assessment followed by a second public meeting to refine these issues, data needs and review protocols after the program released early systematic review planning documents such as a literature search strategy and critical studies' evidence tables.

Olden also worked with NAS to identify independent experts to speak at these second meetings, in order to further elucidate issues and how to address them in the assessments.

Bromberg also called on the IRIS program to address a number of critiques industry representatives have long raised of its assessments.

Those include calls for IRIS assessments to identify what exposure routes and levels result in health effect

Bayer Floats Revised Plan to Resolve Future Roundup Lawsuits (2)

Peter Blumberg, Bloomberg Law

<https://news.bloomberglaw.com/environment-and-energy/bayer-floats-revised-plan-to-resolve-future-roundup-lawsuits?context=search&index=32>

Bayer AG will ask a U.S. judge to approve a settlement of as much as \$2 billion to resolve future lawsuits over claims that its Roundup weedkiller causes cancer, the company said.

The company said it reached an agreement with plaintiffs' lawyers that it is presenting to a San Francisco federal judge who last year rejected a \$1.25 billion proposal, according to a statement issued by Bayer Wednesday. The shares rose as much as 5.9% early Thursday in Frankfurt.

The company said it disclosed in 2020 that it made provisions for the \$2 billion amount, which is part of a broader settlement plan to end an estimated 125,000 Roundup cases.

Read More: Bayer to Alter Plan for Handling Future Roundup Cancer Suits

U.S. District Judge Vince Chhabria raised concerns in July about the initial plan's creation of a science panel to determine whether glyphosate, Roundup's active ingredient, is a carcinogen.

Bayer said in that under its revised plan, the science panel's findings "would not be preclusive but can be used as evidence in potential future litigation." The company will also seek permission from the U.S. Environmental Protection Agency to add a reference link on the labels of its glyphosate-based products for consumers to get access to more information from scientific studies, according to the statement.

(Updates with shares in second paragraph)

Chlorpyrifos Comment Deadline Extended

Todd Neeley, DTN Progressive Farmer

<https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/02/05/chlorpyrifos-comment-period-extended>

EPA has extended the public comment period by 30 days for chlorpyrifos' proposed interim registration decision and the risk assessment underpinning it. The comment period was set to expire on Friday, Feb. 5. Comments can now be submitted through March 7.

EPA released its interim registration decision for the insecticide in December 2020 following its release of a draft risk assessment in September 2020.

The Biden administration is now reviewing EPA regulatory actions from the past four years, including the chlorpyrifos registration review.

"EPA will also follow the science and law in accordance with the Biden-Harris administration's executive orders and the Federal Insecticide, Fungicide, and Rodenticide Act in reviewing the chlorpyrifos DRAs and PID to ensure they are protective of public health and the environment," the agency said in a news release on Friday.

In the interim registration decision, EPA had proposed labeling amendments to limit applications associated with drinking water risks as well as requiring additional personal protection equipment and application restrictions to address handler risks.

The agency also proposed spray drift mitigation in addition to use limitations and application restrictions to reduce exposure for off-target organisms.

The agency's September risk assessment identified dietary risks in adults and children, as well as risks to professional handlers of the chemical. The EPA's draft assessment also identified potential adverse effects to mammals, birds, fish, and terrestrial and aquatic invertebrates. But ultimately, EPA said in its risk assessment that with "limited remaining residential uses of chlorpyrifos, EPA found no risks of concern, including to children's health, when products are used according to the label instructions."

Chlorpyrifos is the main ingredient in what was Dow AgroSciences' -- now Corteva Agriscience's -- Lorsban insecticide. Corteva is a spinoff agricultural company from parent company DowDuPont, formed when Dow and DuPont merged in 2017.

First registered in 1965, chlorpyrifos is an organophosphate insecticide used in a broad range of crops, including corn, alfalfa, sugar beets, cotton, wheat, soybeans and peanuts. Chlorpyrifos targets a range of insects, such as aphids, armyworms, cutworms, bean leaf beetle, rootworm, spider mites, lygus, stink bugs and midges.

Corteva announced in February 2020 that it was phasing out production of chlorpyrifos. The company cited falling demand for the product in the United States as the primary reason for the decision, but the chemical also has faced criticism and litigation over its health risks for decades.

Nonetheless, EPA forged ahead with its re-registration of chlorpyrifos, ensuring that generic formulations of the chemical could remain legal to use in the years to come.

The agency has recently defended the chemical against legal challenges based on concerns about the neurodevelopmental effects it can have on people, particularly infants. In 2015, the Obama EPA proposed revoking all food residue tolerances for chlorpyrifos in response to a petition from the Natural Resources Defense Council and Pesticide Action Network North America, which would effectively end use of the chemical. But that decision was reversed in 2017 by Scott Pruitt, former administrator of the EPA. In recent years, some states and countries have initiated bans on chlorpyrifos, such as Hawaii, California, New York, the UK and the EU.

See EPA's chlorpyrifos review here: <https://www.epa.gov/...>

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Dicamba Faces Legal Battlefield

Emily Unglesbee, DTN Progressive Farmer

<https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/02/05/epa-faces-multiple-dicamba-lawsuits>

EPA is facing a tangle of lawsuits over its 2020 registration of three over-the-top dicamba herbicides, XtendiMax, Engenia and Tavium.

Given the many legal steps ahead for them, these lawsuits are unlikely to immediately affect the legal availability of dicamba in 2021, but they could threaten the chemical's use in spray seasons to come.

The lawsuits have been brought by two different groups of plaintiffs with two very different complaints. On one side, agricultural commodity groups are arguing the new dicamba labels are too restrictive; on the other, environmental groups argue they are too permissive.

Some of these cases are frozen for 60 days, as President Joe Biden's newly appointed EPA reviews all regulations created by the agency since 2017. But for now, here's a breakdown of the existing lawsuits, and what actions are expected ahead.

NATIONAL FAMILY FARM COALITION ET AL. vs. EPA

This group of plaintiffs -- the National Family Farm Coalition, Center for Food Safety, Center for Biological Diversity and Pesticide Action Network -- are a familiar cohort to the agrichemical industry. They are the same groups that successfully filed a lawsuit against the 2016 and 2018 dicamba registrations, which ended in the U.S. Court of Appeals for the Ninth Circuit vacating the registrations of XtendiMax, Engenia and FeXapan on June 3, 2020. See the DTN story here: <https://www.dtnpf.com/...>

In that judicial opinion, three federal judges laid out a list of hurdles EPA would have to overcome in future dicamba registrations. Specifically, the judges concluded EPA either underestimated or entirely ignored known risks of dicamba off-target movement to surrounding environments and farming communities in their 2018 registration. They also

concluded that the technology had anti-competitive effects, as farmers purchased dicamba-tolerant crops to protect themselves and told EPA that the herbicides' complex labels invited non-compliance.

The National Family Farm Coalition et al. is now arguing that EPA's new 2020 dicamba registration has not fixed any of the problems highlighted in that Ninth Circuit court ruling.

In order to challenge the new registration, this group of plaintiffs have filed two lawsuits:

1. A COMPLAINT FILED IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA. (Docket No. 4:20-cv-00555)

This 96-page complaint argues that:

- The new registrations ignore the same "unreasonable adverse risks" of dicamba use on dicamba-tolerant crops that the past registrations did, and thus violate the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).
- EPA was required to provide "notice and comment" for a new pesticide registration and neglected to do so.
- EPA was required to provide "notice and comment" for its decision to change how it oversees Section 24(c) labels and neglected to do so. (See more on that EPA decision here: <https://www.dtnpf.com/...>)

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Bayer Announces \$2B Roundup Settlement

Todd Neeley, DTN Progressive Farmer

<https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/02/04/bayers-2-billion-roundup-settlement>

OMAHA (DTN) -- Bayer has agreed to pay \$2 billion to resolve future Roundup cancer class-action lawsuits in a settlement filed in a federal court on Wednesday.

In June 2020, Bayer reached a settlement of between \$8.8 billion and \$9.6 billion to resolve current and future litigation on glyphosate and dicamba. But that agreement ran into legal troubles and has not been fully finalized. Now Bayer is trying again, this time focusing on a settlement just for future claims of injury from its glyphosate herbicide, branded Roundup.

According to a Bayer news release, the settlement would establish a fund to pay between \$5,000 to \$200,000 to future plaintiffs who allege they developed cancer from glyphosate use. The settlement would make a total of \$2 billion available and last four years.

The company would also create an advisory science panel "whose findings would not be preclusive but can be used as evidence in potential future litigation" involving class members.

"The plan also includes research and diagnostic programs that were part of the original class agreement," Bayer said.

The company said it will work with EPA to "provide greater transparency" and access to glyphosate studies. That would include adding a reference link on the glyphosate labels to provide consumers with access to scientific studies and information.

"The class plan is intended to be one part of a holistic solution designed to provide further closure to the Monsanto Roundup litigation," Bayer said.

Bayer acquired Roundup brands as part of its \$63 billion purchase of Monsanto. Bayer continues to maintain that glyphosate is safe, regularly pointing out that the EPA and many other countries' regulatory agencies support glyphosate's continued use.

But during the past few years, Bayer has lost a number of lawsuits from plaintiffs who alleged their use and exposure to Roundup caused non-Hodgkin's lymphoma and other cancers.

In May 2019, a California jury awarded \$2.055 billion in damages to a couple that has battled cancer after decades of using the product. The couple, both in their 70s, were each diagnosed with the same type of non-Hodgkin lymphoma.

At the end of March 2019, a California jury awarded \$80 million to a man with non-Hodgkin lymphoma who had used glyphosate at an animal refuge for nearly 30 years.

In 2018, another jury in the state awarded \$289 million to a groundskeeper with cancer who used the chemical. The award has since been reduced to \$20.5 million.

EPA reapproved an interim registration of glyphosate in January 2020. The Rural Coalition, Organizacion en California de Lideres Campesinas, Farmworker Association of Florida, Beyond Pesticides and the Center for Food Safety filed a petition for review in March 2020.

Those groups asked a federal court to vacate the decision.

They allege EPA violated the Federal Insecticide, Fungicide and Rodenticide Act and violated the agency's duties in the Endangered Species Act by not consulting with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service before issuing the decision. See more here: .

Most recently, EPA released a biological evaluation of glyphosate's potential effect on endangered species and critical habitats, finding that it was "likely to adversely affect" 1,676 listed species and 759 critical habitats, the vast majority of the species and habitats the agency considered.

The agency's findings mean glyphosate will have to undergo more reviews before its routine registration review, initiated in 2009, can be completed, most likely sometime in 2021, according to EPA estimates on its website. See more here:

Bayer reaches \$2 billion deal over future Roundup cancer claims

Tom Hals, Tina Bellon, Reuters

<https://www.reuters.com/article/bayer-glyphosate/update-1-bayer-reaches-2-bln-deal-over-future-roundup-claims-idUSL1N2K9257>

Bayer AG struck a \$2 billion deal to resolve future legal claims that its widely used weedkiller Roundup causes cancer, the German company said on Wednesday.

Bayer has been struggling to finalize the settlement of claims that Roundup and other glyphosate-based herbicides cause non-Hodgkin's lymphoma, a type of cancer. Bayer inherited the business and the litigation as part of a \$63 billion acquisition of Monsanto in 2018.

The company has said that decades of studies have shown Roundup and glyphosate are safe for human use.

Wednesday's settlement would cover future claims brought by individuals who have been diagnosed with non-Hodgkin's lymphoma and were exposed to Roundup before their diagnosis. The settlement also includes benefits for people who were exposed to Roundup and develop the cancer in the future.

Roundup, which Monsanto first brought to the market in 1974, is widely used by farmers across the United States and Brazil, alongside crops that are genetically engineered to withstand the its herbicidal effect.

Glyphosate will remain on the market. Bayer agreed to seek permission from the U.S. Environmental Protection Agency to provide a reference link on labels so consumers can find scientific studies on the weedkiller.

Under the proposed plan, Bayer will provide \$2 billion for a four-year period as compensation and to cover outreach and diagnostic assistance. Future claimants could receive up to \$200,000 under the deal.

The parties can agree to extend the settlement period.

The company said the settlement amount was disclosed last year.

The agreement must be approved by U.S. District Court Judge Vince Chhabria in San Francisco.

Chhabria in June questioned the legality of a prior settlement plan that Bayer proposed, which envisioned creating a panel of scientists who would rule on the viability of claims.

Under the revised deal, anyone who does not make a claim during the four-year period would then be able to sue in court, according to Elizabeth Cabraser, an attorney for the proposed class. She also said anyone diagnosed with non-Hodgkin's lymphoma who does not like their compensation offer under the class plan can go to the court system and try for a better result.

In June, Bayer reached a wider \$9.6 billion settlement that would resolve the bulk of the more than 100,000 U.S. lawsuits that were already filed over Roundup.

Bayer's stock has been battered by the litigation, but also by billions of euros in writedowns, and a bleaker profit outlook, in large part related to the \$63 billion Monsanto takeover.

The group last year announced 9.25 billion euros in impairment charges on agricultural assets and shocked markets by predicting a slight decline in core earnings per share in 2021 on weaker demand by farmers.

Michael Regan on how he will lead the EPA if confirmed

James Ferguson, RFD TV

<https://www.rfdtv.com/story/43294984/michael-regan-on-how-he-will-lead-the-epa-if-confirmed>

Another Biden nominee moves through the confirmation process on the way to office. Here is how Michael Regan plans to lead the Environmental Protection Agency.

Regan, President Biden's choice to lead the Environmental Protection Agency, fielded questions from lawmakers during his Senate confirmation hearing. Through the meeting, he vowed to take a collaborative approach to regulations including controversial issues like the Waters of the U.S. rule.

"I'm looking forward to convening multiple stakeholder groups on how we chart a path forward," Regan stated. "I don't believe we have to sacrifice water quality at the expense of making sure that farmers, especially small farmers, have a fighting chance in this economy."

As the current head of the North Carolina Department of Environmental quality, he says that it is important to give states more technical assistance and flexibility.

"I want a rule that moves forward that's not overly burdensome but gives the states the flexibility to protect water quality and protect the local agricultural economy," he notes.

When pressed on the Renewable Fuel Standard, Regan said that he would work with lawmakers and the EPA's legal council to decide where to go after numerous court rulings on the regulation.

"You have my commitment that we will take a look at the RFS program and we will introduce some transparency into

that program," Regan stated. "We will let science lead us and we will follow the letter of the law as it was intended for that program."

In an exchange with New Jersey Democrat Cory Booker, Regan agreed to consider tighter restrictions on chlorpyrifos, a pesticide that Booker says threatens farm worker safety.

According to Sen. Booker, "EPA scientists have twice recommended that the EPA ban the use of this pesticide, seven countries in the EU have banned it, and so I want an affirmation from you that you will not render farmworkers in America invisible."

Reagan answered, "You have my confirmation on that."

Booker followed up with "would you consider putting science ahead of big business when it comes to the chemical chlorpyrifos?" To which Regan responded, "We will be driven by science and we will be driven by the rule of law."

If confirmed, Regan would be the first African American to head the EPA and he has committed to addressing environmental injustice in low-income and minority communities across America.

BAYER OFFERS UP TO \$2 BILLION TO SETTLE FUTURE ROUNDUP LAWSUITS

Chuck Abbott, Successful Farming

<https://www.agriculture.com/news/business/bayer-offers-up-to-2-billion-to-settle-future-roundup-lawsuits>

In its second proposal to settle future lawsuits that allege its Roundup weedkiller is carcinogenic, seed and ag-chemical giant Bayer said on Wednesday that it would pay up to \$200 million to individual claimants and a maximum of \$2 billion overall. The offer, which was submitted for approval to a U.S. district court judge in San Francisco, would cover lawsuits filed in the next four years.

"The class plan is intended to be one part of a holistic solution designed to provide further closure to the Monsanto Roundup litigation," said Bayer, based in Germany.

Bayer proposed a \$10.9 billion package last June that included up to \$9.6 billion to resolve approximately 75% of the 125,000 cases that had been filed against Roundup and \$1.25 billion for a separate class of future lawsuits to be guided by a science panel that would determine if Roundup causes non-Hodgkin's lymphoma and, if so, at what level of exposure. The proposal's future lawsuits section was abandoned after U.S. Judge Vince Chhabria questioned if it was constitutional.

Litigation over Roundup has clouded Bayer's financial prospects since it acquired Monsanto, the original maker of glyphosate, the main ingredient in Roundup, in 2018. Glyphosate is the most widely used herbicide in the world.

The Bayer court filing is available here.

EPA approved air treatment technology eyes state of Nevada approval

DREW ANDRE, FOX 5 KVVU-TV

https://www.fox5vegas.com/coronavirus/epa-approved-air-treatment-technology-eyes-state-of-nevada-approval/article_28063890-675a-11eb-b5cf-8beede54349.html

Las Vegas shows are gearing up for a potential return to the stage, and a new anti-viral air treatment could be instrumental in filling up local venues.

The air treatment would be used in essential businesses, and at least one Las Vegas producer hopes it will help them get back to work quicker.

"This is another added safety precaution, and I think it won't just be great for us where you use fog applications, but maybe it can be used in resorts and more broadly for things like meetings," Impresario Extraordinaire of Spiegelworld Ross Mollison said.

The popular Spiegelworld production Absinthe opened briefly in October, but was forced to shut down again when capacity was limited to just 50 people per show.

"It's the greatest entertainment market in the world," Mollison said. "We got to get it back that and keep it that way."

If the Environmental Protection Agency's first airborne anti-viral to stop the spread of COVID-19 comes to Nevada, Mollison believes that could bring more safety to Las Vegas venues.

"The benefit is it provides another level of safety for the air around the active shedder. Where other technologies will talk about disinfecting in the UV system, but that has no benefit whatsoever for someone sitting next to an active shedder," Grignard CEO Etienne Grignard said.

The treatment kills 98 percent of airborne coronavirus, according to Grignard. Health experts say that is the most common type of spread.

"The EPA has streamlined the process. they do recognize this as a game changing technology," Grignard said.

In any indoor space Grignard Pure is run through an HVAC system, or the treatment can be sent through a portable system.

The product is only approved in two states, but the company expects more states to follow, including Nevada.

"We are looking to work with Nevada on having the approval process through a letter of request through the state," Grignard said.

EPA Continues Defense In Suit Testing FIFRA Disinfectant Enforcement

Diana DiGangi, Inside TSCA

<https://insideepa.com/tsca-news/epa-continues-defense-suit-testing-fifra-disinfectant-enforcement>

EPA is raising procedural and substantive defenses in a novel suit challenging its threatened enforcement actions against a manufacturer that allegedly unlawfully marketed skin wipes as a surface disinfectant, suggesting the Biden administration may continue strict enforcement against such products during the coronavirus pandemic.

In a Feb. 3 brief in *Tzumi Innovations v. EPA*, the agency argued both that the case is not yet ripe and that the underlying claims are justified.

"Tzumi's claim are not ripe for review because EPA has not taken any enforcement action, issued a final decision, or subjected Tzumi to any harm," EPA says in the brief opposing the firm's bid for an injunction that would block any future Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Stop Sale, Use or Removal Order (SSURO) against a line of wipes the agency has targeted for possible enforcement action.

The filing is the agency's first in the case since President Joe Biden took office, and signals that the new administration will continue defending at least some of its predecessor's actions on chemical policy even as it seeks to pause suits over larger rulemaking actions.

In its brief to the U.S. District Court for the Southern District of New York, EPA argues both that there is no basis for Tzumi's suit because it has yet to take any "final action" on its open enforcement case against the company, and that the

investigation the agency began in 2020 is justified because Tzumi is improperly marketing a line of hand wipes for use on surfaces without FIFRA review.

Tzumi said in its complaint that EPA had directed it to recall “some 9 million units” of wipes based on a Home Depot listing that calls them “all-purpose disposable wipes” and a product label that says “Use it anytime, anywhere, both of which the agency says implies they can be used to disinfect surfaces and objects. The firm and is seeking an injunction to block any formal recall order.

The Food and Drug Administration (FDA) regulates wipes and other cleaners used on human skin while EPA oversees surface disinfectants, even when they involve the same active chemicals. Tzumi is arguing that it has only marketed its “Wipe-Out!” line for use on humans, and that EPA’s threat of FIFRA enforcement crosses the line between the two agencies’ jurisdictions.

EPA in its brief focuses on arguing that Tzumi’s claims are “not ripe for review” because the agency has yet to take any enforcement action, nor are they reviewable under the Administrative Procedure Act (APA) because there has been no final agency action.

The agency writes that it “took steps to investigate whether Tzumi’s Wipe Out! product violates FIFRA, advise Tzumi of its FIFRA compliance concerns, and attempt to reach a negotiated resolution with Tzumi to remedy any consumer confusion about the product’s use on surfaces. Rather than cooperate with EPA’s investigation or address its compliance concerns, Tzumi preemptively filed this action for preliminary and permanent injunctive relief.”

Moreover, EPA writes that despite Tzumi’s argument that the investigation is unfounded, because “evidence suggests that the labeling on Tzumi’s Wipe Out! product has confused consumers and retailers.”

It continues that “some consumers have stated in online reviews that they use the wipes on surfaces for disinfection and have compared the product to Clorox and Lysol. Tzumi appears to have further contributed to the confusion by providing these customer reviews to retailers to put on their website.” The agency also says “numerous retailers” have stocked Tzumi’s wipes near FIFRA-regulated surface disinfectants.

‘Misrepresented’ Facts

Tzumi’s suit is one of two cases now pending in federal court over the Trump EPA’s aggressive enforcement of FIFRA during the coronavirus pandemic against products that claim to mitigate the spread of the coronavirus. The Biden administration has yet to announce whether it will maintain its predecessor’s focus...

EPA Announces Approval of Extensions to August 24, 2020, First-Ever Long-Lasting Antiviral Product for Use against COVID-19

Lisa M. Campbell and Heather F. Collins, M.S., Bergeson & Campbell Blogs

<http://pesticideblog.lawbc.com/entry/epa-announces-approval-of-extensions-to-august-24-2020-first-ever-long-last>

On January 19, 2021, the U.S. Environmental Protection Agency (EPA) announced the issuance of a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 18 emergency exemption to the states of Oklahoma and Arkansas, permitting American Airlines to use SurfaceWise2, believed to inactivate coronaviruses like the SARS-CoV-2 virus on surfaces, in specific airport facilities and planes. EPA also has revised the terms of use for SurfaceWise2 for all current emergency exemptions.

EPA’s initial emergency exemption for the state of Texas issued on August 24, 2020, specified that the product remained effective for seven days. According to its updated labels for all three states, EPA has now approved claims that SurfaceWise2 provides residual surface control of the coronavirus SARS-CoV-2 on surfaces that are undisturbed for up to 30 days. The updated labels state “When used in accordance with the directions for use, SurfaceWise®2 provides residual surface control of coronaviruses, including SARS-CoV-2, for up to 30-days on undisturbed (e.g., are not routinely

disinfected with List N products) non-porous treated surfaces.”

Of note, EPA also states in its announcement that SurfaceWise2 should be reapplied every time surfaces are disinfected to ensure continuous product performance as exposure to prolonged wetness may adversely impact the efficacy of the product. The updated labels state in the Directions for Use that the user must “Reapply SurfaceWise®2 after surfaces are disinfected to ensure continuous product performance” and “Do not expose SurfaceWise®2 to prolonged wetness as this may adversely impact the efficacy of the product.”

FIFRA Section 18 authorizes EPA to exempt federal or state agencies from any provision of FIFRA in the event that emergency conditions require such an exemption. EPA regulations (40 C.F.R. Part 166) specify when state or federal government agencies will be permitted to use unregistered pesticides in response to an emergency. EPA’s regulations provide that an emergency exists when:

There is an “urgent, non-routine” situation requiring the use of a pesticide to control a new pest not previously prevalent in the United States, to control significant risks to health, the environment, beneficial organisms, or endangered species, or to prevent specified types of economic loss; and

There is no registered pesticide or economically or environmentally feasible alternate method of control available.
40 C.F.R. § 166.3.

The exemptions granted can be very specific and time-limited; EPA has developed a database so companies can search (by chemical, site, pest, applicant, or date range) to determine if an emergency exemption has been issued and its expiration date.

In this case, EPA approved the Section 18 emergency exemption request for SurfaceWise2 -- a product manufactured by Allied BioScience. SurfaceWise2 is a surface coating that Allied BioScience states inactivates viruses and bacteria within two hours of application and continues to work against them for up to 30 days, on undisturbed non-porous treated surfaces. EPA’s approvals will allow Texas, Oklahoma, and Arkansas to permit American Airlines airport facilities and planes at specific locations identified on the label and two Total Orthopedics Sports & Spine Clinics in Texas to use SurfaceWise2 under certain conditions. The approved Section 18 emergency requests are effective for one year. This public health exemption will expire August 24, 2021. As new data emerge, EPA may alter the terms of the product’s emergency uses, as it did with the modifications discussed here.

Additional information on Section 18 emergency exemption requests and SARS-CoV-2 is available [here](#).

EPA Announces the Issuance of a Revised Advisory on Disinfectants Making False and Misleading Claims against COVID-19

Lisa M. Campbell and Lisa R. Burchi, Bergeson & Campbell Blogs

<http://pesticideblog.lawbc.com/entry/epa-announces-the-issuance-of-a-revised-advisory-on-disinfectants-making-fa>

In January 2021, the U.S. Environmental Protection Agency’s (EPA) Office of Enforcement and Compliance Assurance (OECA) announced that it issued a revised compliance advisory (Advisory) on products claiming to kill SARS-CoV-2, the novel coronavirus that causes COVID-19. EPA first issued this guidance on June 1, 2020, and it is discussed in our blog [here](#).

The Advisory has been revised significantly, reflecting new developments and experience since the Advisory was first issued.

The first section of the Advisory addresses “Products claiming to be effective against the coronavirus causing COVID-19.” That title has changed, as well as the language throughout the Advisory, to refer now to products that are “effective against” the coronavirus, instead of products that “kill” the coronavirus.

EPA has added a new section entitled “What is the difference between an EPA registration number and an EPA

establishment number?” Presumably, this is intended to address confusion among some with regard to this important difference. The Advisory now states:

An EPA establishment number is not the same as an EPA registration number. An EPA registration number signifies that the pesticide and its claims have been reviewed and approved by EPA. An establishment number identifies the EPA-registered location where the product was produced. EPA provides a National List of Active EPA-Registered Foreign and Domestic Pesticide and/or Device-Producing Establishments at: <https://www.epa.gov/compliance/national-list-active-epa-registered-foreign-and-domestic-pesticide-andor-device-producing>.

The section entitled “Devices that claim to kill the coronavirus” has been significantly modified. In particular, EPA has now deleted from the Advisory language that “ozone generators, UV lights and other pesticide devices may not be able to make claims against coronavirus where devices have not been tested for efficacy or safety for use against the virus causing COVID-19 or harder-to-kill viruses.” Instead, the Advisory states legal requirements applicable to devices, namely that the labels “include adequate warning and caution statements and directions for use” and have an EPA establishment number. EPA further adds the following: “Additionally, making false or misleading labeling claims about the safety or efficacy of a pesticidal device is prohibited and could result in the issuance of a Stop Sale, Use, or Removal Order and penalties under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).”

In its “Compliance Concerns” section, EPA states it continues to pursue enforcement against products making false and misleading claims regarding their efficacy against the coronavirus, adding that it is “particularly concerned with pesticide and pesticide device products sold online on e-commerce platforms that are fraudulent, counterfeit, and/or otherwise ineffective.”

EPA has added new language to address a particular issue with regard to “residual” claims:

In the United States, it is unlawful to distribute or sell a pesticide which includes claims that it will kill a particular pathogen, unless that pesticide is registered by EPA and that particular claim has been deemed acceptable by the agency. In some instances, companies have unlawfully added additional claims to the labels of their registered pesticide products that have not been approved by EPA. For example, a claim for persisting or long-lasting effect against viruses, referred to as “residual claims” (i.e., claims that a product provides an ongoing antimicrobial effect beyond the initial time of application, ranging from days to weeks to months), may be accepted by EPA only when supported by acceptable studies demonstrating satisfactory residual efficacy. Until EPA approves a residual claim, it cannot lawfully be included on a registered product as part of distribution or sale. For more information on residual claims, see: <https://www.epa.gov/coronavirus/there-anything-i-can-do-make-surfa>

EPA Will Hold Webinar on Proposed Revisions to the TSCA Fees Rule on February 18, 2021

Lynn L. Bergeson and Carla N. Hutton, Bergeson & Campbell Blogs

<http://www.tscablog.com/entry/epa-will-hold-webinar-on-proposed-revisions-to-the-tsca-fees-rule-on-februa>

The U.S. Environmental Protection Agency (EPA) will hold a webinar on February 18, 2021, “to educate stakeholders on proposed revisions to the Toxic Substances Control Act (TSCA) Fees Rule announced in December 2020.” The webinar will also provide stakeholders an opportunity to provide comment to EPA on the proposed changes. Stakeholders who would like to provide oral comments during the webinar must register by 5:00 p.m. (EST) on February 16, 2021. Stakeholders may register as listen-only attendees at any time up to the end of the meeting. EPA will provide details on how to access the webinar and slides after participants register via Eventbrite.com. EPA states that it will provide a transcript and recording on the TSCA Administration Fees website following the webinar. Comments on the proposed revisions to the rule are due February 25, 2021. EPA intends to issue the final rule in 2021. More information on the proposed rule is available in our December 30, 2020, memorandum, “EPA Intends Proposed Rule to Increase Flexibility and Reduce Burdens under TSCA Fees Program.”

EPA Announces Latest Update to the TSCA Inventory

Lynn L. Bergeson and Carla N. Hutton, Bergeson & Campbell Blogs

<http://www.tscablog.com/entry/epa-announces-latest-update-to-the-tsca-inventory>

The U.S. Environmental Protection Agency (EPA) announced on February 3, 2021, the latest update to the Toxic Substances Control Act (TSCA) Inventory, “a list of all existing chemical substances manufactured, processed, or imported” in the United States. EPA states that this biannual update to the public TSCA Inventory is part of its regular posting of non-confidential TSCA Inventory data. EPA plans to release the next regular update of the Inventory in summer 2021. According to EPA, the Inventory contains 86,557 chemicals of which 41,864 are active in U.S commerce. EPA notes that other updates to the TSCA Inventory include new chemical substance additions, commercial activity data, and regulatory flags, such as polymer exemptions, TSCA Section 4 test orders, and TSCA Section 5 significant new use rules (SNUR).

‘Forever Chemicals’ Must Be Regulated as a Class

David Andrews, Environmental Working Group

<https://www.ewg.org/news-and-analysis/2021/02/forever-chemicals-must-be-regulated-class>

To protect the health of people, communities and the environment, the toxic fluorinated “forever chemicals” known as PFAS should not be regulated one by one but as a class, more than a dozen scientists, including this author, argue in an article published today in the peer-reviewed journal Environmental Science & Technology Letters.

The article follows an earlier study by the same group of U.S. and international scientists, as well as a study by other researchers, who called for managing PFAS as a chemical class. After those studies were published, researchers affiliated with the PFAS manufacturer Honeywell International published a commentary arguing that the chemicals their company produces should not be subject to the same level of regulatory scrutiny as other PFAS.

The chemical industry has long opposed the systemic regulation of PFAS as a class.

PFAS are often called “forever chemicals” due to their extreme persistence in the environment. Over time the potential for harm increases. Studies of newer PFAS suggest that these chemicals act much like the earlier chemicals they were designed to replace, from exhibiting key characteristics of carcinogens to causing many of the same health harms. Yet for hundreds of PFAS produced for commercial use and thousands known to exist, toxicity studies are sorely lacking.

Last month, the Environmental Protection Agency announced its intent to set drinking water standards for the two most notorious PFAS – PFOA, formerly used to make DuPont’s Teflon, and PFOS, formerly an ingredient in 3M’s Scotchgard and firefighting foam. Setting legal limits for just these two chemicals will likely take years, even as they contaminate tap water or groundwater at more than 2,000 sites in 49 states. Our research estimates that more than 200 million Americans are exposed to PFOA and PFOS in drinking water.

PFAS are used in hundreds of different products, including everything from textile coatings and food wrappers to guitar strings and printer ink. But data is lacking on Americans’ total exposure to this class of chemicals, and how much harm they are causing to our health.

Chemical manufacturers’ constant refrain is that their chemicals are safe and the regulatory system works. In fact, the chemical regulations system in the U.S. is broken, and fails woefully to protect public health.

In 2019, I argued in Bloomberg Law that PFAS must be regulated as a class because the chemicals never occur alone, but in complex mixtures. In counterpoint, Jessica Bowman of the American Chemistry Council argued: “The science supports the conclusion that today’s PFAS products do not present a significant risk to human health or the environment.”

To illustrate the safety of the new generation of PFAS, she pointed to three studies of PFHxA, a so-called short-chain compound, supposedly safer than long-chain PFAS such as PFOS and PFOA. But the evidence of harm from short-chain compounds continues to grow:

In July, the Food and Drug Administration announced a phaseout of 15 food contact material approvals that had relied on PFHxA safety assessments, because of concern for bioaccumulation and harm to human health. In December, higher levels of PFBA, a short-chain PFAS, were found to be associated with increased severity of Covid-19. Solvay's newer PFAS compounds were discovered across New Jersey, and last month studies were made public indicating that these new chemicals were as toxic and bioaccumulative as those they were meant to replace. Managing PFAS as a class is a critical step in addressing the PFAS crisis, along with eliminating non-essential uses. Reducing the unnecessary use of PFAS breaks the cycle of ongoing contamination. Lawmakers should prioritize quickly phasing out these unnecessary uses of PFAS.

The EPA should also place a moratorium on approval of new PFAS chemicals and new uses of existing PFAS chemicals. The EPA must also move quickly to regulate PFAS as a class in industrial discharges into the...

Implications Of EPA Designation Of PFOA and PFOS As "Hazardous Substances"

Adam Cutler and Robert Schena, JD Supra (Fox Rothschild)

<https://www.jdsupra.com/legalnews/implications-of-epa-designation-of-pfoa-6708212/>

The Biden Administration has pledged to designate certain PFAS as hazardous substances under federal law. What effect would the United States Environmental Protection Agency's (EPA) designation of PFOA and PFOS as "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) have on the legal landscape? As you may recall, in a previous post we discussed the regulatory processes through which EPA can designate PFOA and PFOS as "hazardous substances." Now, in this post we discuss what a designation means for liability for responsible parties under CERCLA and relevant reporting obligations.

Responsible Party Liability

The first immediate effect occurs in the context of a responsible party's liability to EPA and other responsible parties. Under CERCLA section 107(a) (42 U.S.C. § 9607(a)), EPA can recover costs that it incurs addressing the release of a "hazardous substance" from responsible parties. Section 107(a) of CERCLA identifies four categories of persons who are responsible for "all costs of removal or remedial action" incurred by EPA, and those terms are defined to cover the cleanup, removal, and other remedies implemented to address a release or threatened release of a "hazardous substance" into the environment. In addition, under section 113(f) of CERCLA (42 U.S.C. § 9613(f)), a responsible party can seek contribution from other parties who are also liable for the release of a "hazardous substance" under section 107(a). Thus, designation of PFOA and PFOS as hazardous substances would both create CERCLA liabilities and afford contribution remedies to responsible parties at PFAS sites.

Reporting Obligations

The second effect involves release reporting obligations. Under CERCLA section 103(a) (42 U.S.C. § 9603(a)), a person in charge of a facility must report any release of a "hazardous substance" from the facility if the quantity of that release is equal or greater than the "reportable quantity" (RQ). Section 102(b) of CERCLA (42 U.S.C. § 9602(b)) dictates an RQ of one pound for any "hazardous substance" if EPA does not promulgate a specific quantity for that substance at 40 CFR 302.4 and 302.5.

'Killer fog juice' held up as a COVID remedy on the Strip

John Katsilometes, Las Vegas Review-Journal

<https://www.reviewjournal.com/entertainment/entertainment-columns/kats/killer-fog-juice-held-up-as-a-covid-remedy-on-the-strip-2273553/>

"Absinthe" has been cleaning up its act, and now we are not talking about The Gazillionaire's raunchy monologues.

The sidelined hit show at Caesars Palace is promoting a product to purify the air we share, the Grignard Pure antiviral, antimicrobial air treatment. Scientists have found Grignard Pure's active ingredient, triethylene glycerol (TEG), can kill up to 98 percent of SARS-CoV-2 (COVID-19) viral particles within 10 minutes of being introduced to a venue.

This is why "Absinthe" producer and Spiegelworld production company founder Ross Mollison calls Grignard Pure, "Our killer fog juice."

In January, the Environmental Protection Agency (EPA) approved its use in Tennessee and Georgia, for starters. An independent company in our state would need to send a formal letter of request to the Nevada Department of Agriculture to gain permission for professional use. That initial approval would cover the use of the product for professional purposes statewide.

Mollison is hoping for such approval, soon. He is trusting the science to help make his theaters safe. He plans to use the product in "Absinthe," and also "Opium" at The Cosmopolitan of Las Vegas and "Atomic Saloon Show" at The Venetian's Grand Canal Shoppes and, possibly, Palazzo Theater (another option for the show to perform until full-capacity venues are allowed).

Of the Grignard Pure potential, Mollison said, "A whole lot of guys in white coats, the manufacturers and EPA tell us it does have this positive effect. We feel this will provide another level of security."

But the U.S. testing and approval protocol does not apply overseas, and officials in the U.K. remain unconvinced.

Reports from the London Daily Mail on Wednesday indicate theater legend Andrew Lloyd Webber has spent months attempting to convince Britain's health officials to run a clinical trial on TEG. Those officials have relented, saying there is not sufficient evidence of the product's effectiveness or its long-term health effects.

The Scientific Advisory Group for Emergencies (SAGE) called for more evidence to be reviewed in the U.K. before the use of "continuous sprays" is considered.

Nonetheless, the legendary composer has offered to test the substance at his 2,300-seat London Palladium, which successfully hosted a socially distanced pantomime in December. Webber told the Daily Mail, "All we are is saying is, 'Look, you should trial this.' Because if it is safe, it could be a game-changer for schools and any form of indoor public space."

For the uninitiated, Grignard's products are already used in theatrical fog devices and in lighting systems in stage shows in Las Vegas, and in such high-profile venues as Broadway theaters. Overall, the Grignard company owns about an 80-percent market share in the U.S.

If you have been to a show that uses haze or fog or artificial smoke, even the Fogmaster 5000 in "Rock of Ages," you have probably shared space with a Grignard haze.

Grignard Pure is one variation of many Grignard formulas. The active ingredient in Grignard Pure is triethylene glycerol (TEG), which has been found to nullify the COVID virus.

The Grignard Pure mix was actually established about five years ago and was found to be especially effective as an airborne, anti-bacterial disinfectant. At the time, there was no need for widespread use of that particular mix until the pandemic took hold. But beginning in January of 2020, a team of independent scientists tested the product at Microchem Laboratory in Round Rock, Texas.

"We got lucky with one (formula) we developed in 2015," Grignard Managing Director Etienne "TN" Grignard said in a phone chat Wednesday. "We have been blessed to have independent scientists validate its effectiveness."

Grignard says the process to prove Grignard Pure's safety

EPA To Outline Plans for Next Asbestos Risk Review This Summer

Cameron Ayers, MesoWatch

<https://mesowatch.com/epa-to-outline-plans-for-next-asbestos-risk-review-this-summer/>

The EPA will issue a draft report on asbestos this summer, detailing its plans for a forthcoming risk evaluation on older uses of the carcinogen.

This somewhat nebulous timeframe was announced Feb. 3 at a public webinar about an earlier risk evaluation that only looked at the dangers posed by current uses for asbestos.

According to the agency, the draft report will be released in the middle of this year and will focus on the scope of the agency's next risk evaluation, following its December 2020 report.

Risky Business

That risk evaluation report — which was titled Part 1 to clarify that another review would be in the offing — covered only one type of asbestos: chrysotile. This is because chrysotile is the only form of asbestos still imported and used in the U.S. today.

The report looked at existing uses of asbestos and concluded that chrysotile poses an unreasonable risk to human health in all consumer uses and in six types of commercial use: chlor-alkali diaphragms, sheet gaskets, brake blocks, aftermarket automotive brakes and linings, other vehicle friction products, and other gaskets. The agency determined that chrysotile poses no unreasonable risk to the environment.

The next risk evaluation — Part 2 — will address legacy uses and the disposal of all types of asbestos: chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite, agency officials said. This summer's draft document on the scope of the evaluation will be the starting point for this multi-year process, followed by a final scope document, a draft risk evaluation and — after a public comment period — a final risk evaluation.

The Clock Is Ticking

Both risk evaluations are intended to inform further agency regulation of asbestos, already a heavily regulated product. Under the Toxic Substances Control Act (TSCA), agency officials have one year to issue a proposed rule on the risks posed by asbestos, and then another year before issuing a final rule, according to agency officials.

The agency didn't originally plan on a Part 2 report but was ordered to by the Ninth U.S. Circuit Court of Appeals in November 2019, in response to a lawsuit filed by activists over its interpretation of TSCA. The court concluded that "EPA's exclusion of legacy uses and associated disposals [for asbestos] contradicts TSCA's plain language."

A coalition of activists is threatening another lawsuit over the agency's handling of the risk evaluation, arguing that changes to TSCA in 2016 mandated that the agency complete a risk evaluation on all forms of asbestos last June.

Comments Galore

For the public webinar, agency officials gave a brief summary of the findings in the Part 1 report before addressing its plans for the next one. Alie Muneer — a scientist in the Existing Chemicals Risk Management Division of the EPA's Office of Chemical Safety and Pollution Prevention — stressed that the agency is "committed to developing risk management actions for chemicals in a way that is transparent and includes meaningful outreach with stakeholders and affected parties."

The bulk of the hour-long meeting was given over to public comments on the Part 1 report, though multiple commenters also addressed the agency's plans for the Part 2 report, as well. Nine speakers took turns either excoriating the agency or praising it. In some cases, speakers did both.

Some commenters were ultra-specific, such as Eric Bruckner of California's North Coast Unified Air Quality Management District, who asked about the regulatory framework planned for asbestos in car brakes.

Stern Opposition

Others were more generalized, such as Linda Reinstein's remarks on behalf of the Asbestos Disease Awareness Organization, which she heads. She contended that the Part 1 "evaluation is dangerously flawed and incomplete." She argued that waiting for a separate Part 2 report on legacy asbestos uses is "unreasonable" and "will lead to preventable deaths." She pressed the agency to ban all forms of the cancer...

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And while you're reading.... Remember to shoot your coworkers a shooting star!